

JPA File No.: 06-062  
AG Contract No.: KR06-0672TRN  
Project No.: HRF-CWD-0-840  
Project: Roadway Improvements  
Section: South Willard Street  
TRACS No.: HF140 01C  
Budget Source Item No.: HURF

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF COTTONWOOD

**THIS AGREEMENT** is entered into this date August 18, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF COTTONWOOD, acting by and through its MAYOR and CITY COUNCIL the ("City"). The State and the City are collectively referred to as "Parties".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-334 and § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below for the construction of two additional lanes on South Willard Street. Such funds shall be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG) Federal Apportionment and corresponding Obligation Authority as shown in column B and C in the table below. All such transactions to be made in accordance with the schedule shown in column A.

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

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NO. 28374  
Filed 8/18/06 by Secretary of State  
Date 8/18/06  
Janice K. Brewer  
Secretary of State  
By: [Signature]

<b>A</b> Federal Fiscal Year to be Processed	<b>B</b> STP Apportionment to be Charged to NACOG	<b>C</b> STP Obligation Authority to be Charged to NACOG	<b>D</b> 90 %HURF Funds to be Transferred to City
<b><u>Construction</u></b>			
FFY 2006	\$872,809.00	\$752,000.00	\$676,800.00
<b>Total</b>	<b>\$872,809.00</b>	<b>\$752,000.00</b>	<b>\$676,800.00</b>

## **II. SCOPE OF WORK**

### 1. The City shall:

a. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the construction of two lanes on South Willard Street.

b. Be responsible for any contractor claims required for design of the project for extra compensation due to delays or whatever reason attributable to the City.

c. Advertise for bids and award one or more construction contracts for the Project. Administer contracts for the project and make all payments to the contractor(s). Be responsible for any contractor claims required to complete the project for extra compensation due to delays or whatever reason attributable to the City. Comply with all applicable State Laws, Rules and Regulations.

d. Invoice the State for thirty percent (30%) of the cost of construction upon award of the construction project. Total payment by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made.

e. Invoice the State for 30% of the cost of construction when the project reaches the 30% completion stage. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.

f. Invoice the State for 30% of the cost of construction when the project reaches the 60% completion stage. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.

g. Within 30 days after the Final Close Out Field Review provide to the State a Final Acceptance Letter.

h. Invoice the State for 10% of the cost of construction when the project has been satisfactorily completed and accepted by the City. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.

i. Upon satisfactory completion of construction, approve and accept the project on behalf of the City, provide for the maintenance, at its own expense. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

2. The State shall:

a. Charge NACOG STP Apportionment in the amount of \$872,809.00 and NACOG Obligation Authority in the amount of \$752,000.00 for construction of two lanes on South Willard Street.

b. Within thirty-days (30) after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the City HURF funds in the amount of 30% at each invoiced stage for construction.

c. Within 30 days after receipt and approval of construction invoices, advance the City HURF Funds or the remaining 10% of \$676,800.00 construction of two lanes on South Willard Street.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon 30 days written notice to the other party. It is understood and agreed that in the event the City cancels this Agreement, the State shall in no way be obligated to maintain said project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing Highway User Revenue Funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Cottonwood  
Attn: City Manager  
827 N. Main Street  
Cottonwood, Arizona 86326  
(928) 634-5526  
(928) 634-5520 Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Amended Agreement the day and year first above written.

**CITY OF COTTONWOOD**

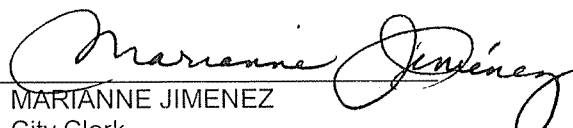
By   
RUBEN JAUREGUI  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By   
DALE BUSKIRK  
Division Director

ATTEST:

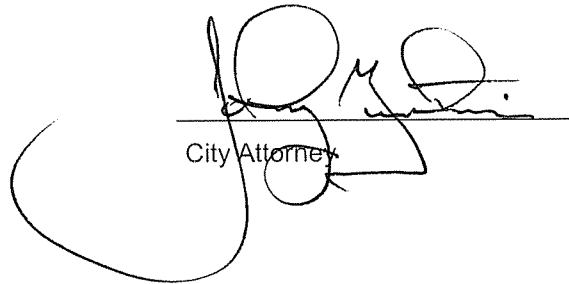
By   
MARIANNE JIMENEZ  
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF COTTONWOOD

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 31<sup>st</sup> day of July, 2006.

  
\_\_\_\_\_  
City Attorney

RESOLUTION NUMBER 2222

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR HIGHWAY USER REVENUE FUNDS TO BE USED FOR THE CONSTRUCTION OF SOUTH WILLARD STREET.

WHEREAS, the State is empowered by A.R.S. § 28-334 and A.R.S. § 28-401 to enter into this Agreement; and

WHEREAS, the City is empowered by A.R.S. § 48-572 to enter into this Agreement; and

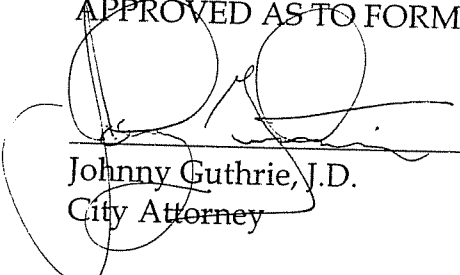
WHEREAS, the State has approved the exchange of Highway User Revenue funds for the construction of South Willard Street in Cottonwood, Arizona.

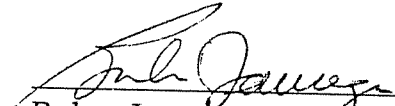
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA:

THAT, the Intergovernmental Agreement with the State of Arizona, Department of Transportation, for the construction of South Willard Street is hereby approved.

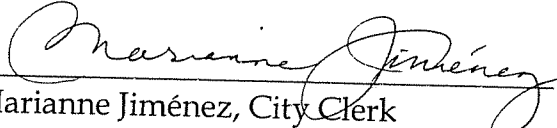
PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 11TH DAY OF JULY 2006.


APPROVED AS TO FORM:

  
Johnny Guthrie, J.D.  
City Attorney

  
Ruben Jauregui, Mayor

ATTEST:

  
Marianne Jiménez, City Clerk

<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0672TRN (**JPA 06-062**), an Agreement between public agencies, i.e., The State of Arizona and The City of Cottonwood, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 14, 2006

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:974359  
Attachment